without an unfriendly intention; and with equal reason might it be alleged or imputed where the intention was amicable.

I give the concluding reasons ascribed to his Lordship for his decision. They are as follows:

"I may mention, that corporations aggregate are now so common, that I believe that a public journal is conducted by a corporation aggregate limited. Therefore, it seems to us, that for what is done by the authority of a corporation aggregate, that a corporation aggregate ought, as such, to be liable as well *perhaps* as the individuals. *Therefore*, we think there ought to be judgment for the plaintiffs."

The connection between the number of aggregate corporations and their capacities or liabilities, and the dependence in any degree of the one upon the other, I leave to those who have been favored with greater perspicacity than has been given to me. I am wholly unable to perceive them.

In fine, with due respect for others, and with becoming diffidence of myself, I am constrained to say, of the opinion in the case of Whitfield *v.* The Southeastern Railway Company, as it has been brought to the view of this court, that in its arguments and conclusions it is confused and obscure; and is incongruous and contradictory, both in its reasoning and its conclusions. In the line of English adjudications it presents itself as solitary and eccentric, and in opposition to the most inveterate, the clearest, and reiterated distinctions announced by the sages of the law—distinctions having their foundation in reason and in the essential character of the subjects to which those distinctions have been applied. I cannot yield to that opinion my assent. I think, therefore, that for either of the objections before assigned there should be added to the reversal of the judgment of the Circuit Court an order for a dismission of the suit.

WILLIAM CAMPBELL AND THIRTY-SEVEN OTHERS, PLAINTIFFS IN ERROR, *v.* CLEMENT BOYREAU.

This court has heretofore decided, in several cases, that, in order to bring the questions of law before this court by writ of error, the facts must be found in

the court below by a jury, by a general or special verdict, or must be agreed upon in a case stated.

And also, that where the parties agree that the court shall decide questions both of law and fact, none of the questions decided, either of fact or law, can be reviewed by this court on a writ of error.

The practice in Louisiana is an exception to this general rule, as that practice is sanctioned by the act of Congress which requires the courts of the United States to conform to the practice of the State courts.

THIS case was brought up by writ of error from the Circuit Court of the United States for the northern district of California.

The case having been decided by this court upon a point of practice, it is necessary to state only so much of it as to show how the point of practice arose.

It was a suit in the nature of an ejectment, brought by Boyreau to recover all the undivided half of an undivided eighteenth part of that certain tract of land, rancho, or farm, known as the "Rancho San Leandro," situate in the county of Alameda, State aforesaid, bounded as follows: on the north by the San Leandro creek; on the west by the bay of San Francisco; on the south by the San Lorenzo creek; and on the east by a line commencing on the southern bank of the San Leandro creek, at a point on said bank, from whence a line bearing south, 29 degrees east, will strike the eastern bank of a lagoon, situated about six or seven chains south of said creek, thence running on said line about two hundred and sixty-two (262) chains, parallel with a ridge of hills running from the San Leandro creek to the San Lorenzo creek, at a point at the base of the foot hills on the said creek.

Upon the trial, the whole case was submitted to the court, a jury being expressly waived by agreement of parties; and the evidence and arguments of counsel being heard, the court proceeded to find a long history of facts, which is set forth in the record. The copy of the grant offered in evidence excluded land on the east occupied by the Indians, and the court, in its finding, ran the east line in such a way as to exclude two of the defendants, who were pronounced not guilty. All the evi

dence necessary for the court to make up its opinion upon this point, and also upon other facts in the case, would seem to belong more appropriately to a jury. The second bill of exceptions contained the elaborate opinion of the court, in which questions of fact and questions of law were all decided.

The case was argued for the defendant in error in this court by *Mr. Brent* and *Mr. Crittenden*, who, upon the point in question, contended that the finding by the court of the facts was as binding on the plaintiffs in error as if the facts were stated in a special verdict.

Mr. Chief Justice TANEY delivered the opinion of the court.

This is an action of ejectment (although the pleadings are not in the form prescribed by the common law) to recover a tract of land called *San Leandro*, situated in California. It was brought in the Circuit Court of the United States for that district. The parties agreed to waive a trial of the facts by a jury, and that the facts as well as the law should be decided by the court, upon the evidence adduced by the parties.

In pursuance of this agreement, evidence was offered on both sides; and the court proceeded to decide the facts in dispute, and then proceeded to decide the questions of law arising on the facts so found by the court; and finally gave judgment against the plaintiffs in error, who were defendants in the court below. And this writ of error is brought to revise that judgment.

It appears by the transcript that several exceptions to the opinion of the court were taken at the trial by the plaintiffs in error—some to the admissibility of evidence, and others to the construction and legal effect which the court gave to certain instruments of writing. But it is unnecessary to state them particularly; for it has been repeatedly decided by this court, that, in the mode of proceeding which the parties have seen proper to adopt, none of the questions, whether of fact or of law, decided by the court below, can be re-examined and revised in this court upon a writ of error.

It will be sufficient, in order to show the grounds upon which

this doctrine has been maintained, and how firmly it has been settled in this court, to refer to two or three recent cases, without enumerating the various decisions previously made, which maintain the same principles. The point was directly decided in Gould and others *v.* Frontin, 18 How., 135; which, like the present, was a case from California, where a court of the United States had adopted the same mode of proceeding with that followed in the present instance. And the decision in that case was again reaffirmed in the case of Suydam *v.* Williamson and others, 20 How., 432; and again in the case of Kelsey and others *v.* Forsyth, decided at the present term.

Indeed, under the acts of Congress establishing and organizing the courts of the United States, it is clear that the decision could not be otherwise; for, so far as questions of law are concerned, they are regulated in their modes of proceeding according to the rules and principles of the common law, with the single exception of the courts in the State of Louisiana, of which we shall presently speak. And by the established and familiar rules and principles which govern common-law proceedings, no question of the law can be reviewed and re-examined in an appellate court upon writ of error, (except only where it arises upon the process, pleadings, or judgment, in the cause,) unless the facts are found by a jury, by a general or special verdict, or are admitted by the parties, upon a case stated in the nature of a special verdict stating the facts, and referring the questions of law to the court.

The finding of issues in fact by the court upon the evidence is altogether unknown to a common-law court, and cannot be recognised as a judicial act. Such questions are exclusively within the province of the jury; and if, by agreement of parties, the questions of fact in dispute are submitted for decision to the judge upon the evidence, he does not exercise judicial authority in deciding, but acts rather in the character of an arbitrator. And this court, therefore, cannot regard the facts so found as judicially determined in the court below, nor examine the questions of law, as if those facts had been conclusively determined by a jury or settled by the admission of the parties. Nor can any exception be taken to an opinion of the

court upon the admission or rejection of testimony, or upon any other question of law which may grow out of the evidence, unless a jury was actually impanelled, and the exception reserved while they were still at the bar. The statute which gives the exception in a trial at common law gives it only in such cases. And as this court cannot regard the facts found by the judge as having been judicially determined in the court below, there are no facts before us upon which questions of law may legally and judicially have arisen in the inferior court, and no questions, therefore, open to our revision as an appellate tribunal. Consequently, as the Circuit Court had jurisdiction of the subject-matter and the parties, and there is no question of law or fact open to our re-examination, its judgment must be presumed to be right, and on that ground only affirmed.

The cases referred to in the argument, which were brought up by writs of error to a Circuit Court of Louisiana, do not apply to this case. The act of Congress of May 26, 1824, (4 Stat., 62,) adopted the practice of the State courts in the courts of the United States. And a writ of error to a Circuit Court of that State, therefore, is governed by different principles from a like writ to the Circuit Court of any other State. And as, by the laws of Louisiana, the facts, by consent of parties, may be tried and found by the court without the intervention of a jury, this court is bound, upon a writ of error, to regard them as judicially determined, and treat them as if they had been found by the special verdict; and the questions of law which arise on them are consequently open to the revision of this court.

But the practice in relation to the decisions in that State is an exception to the general rules and principles which regulate the proceedings of the courts of the United States; nor can the laws or the practice of any other State authorize a proceeding in the courts of the United States different from that which was established by the acts of 1789 and 1803, and the subsequent laws carrying out the same principles and modes of proceeding.

Upon the grounds above stated, the judgment in this case

must be affirmed. But it must at the same time be understood that this court express no opinion as to the facts or the law as decided by the Circuit Court, and that the whole case is open to re-examination and revision here, if the questions of fact or law should hereafter be brought legally before us, and in a shape that would enable this court to exercise its appellate jurisdiction.

LESSEE OF WILLIAM C. FRENCH AND WIFE, PLAINTIFF IN ERROR, *v.* WILLIAM H. SPENCER, JUN., JOSEPH SPENCER, AND ANNA A. SPENCER.

By an act of Congress passed in 1816, (3 Stat. at L., 256,) a bounty in land was given to those American citizens who were living in Canada at the time when war was declared against Great Britain, in 1812, and who returned to the service of their country.

This act was not like other bounty-land acts, by which the Government undertook to locate the bounty land. Under the act first mentioned, the warrants were delivered to the owners to be located by them, and were therefore assignable after an entry was made in the Land Office.

The deed of conveyance in question was sufficient to pass the interest of the grantor.

A patent issued to the original beneficiary, who had previously sold his right, enured to the benefit of the purchaser, and related back to the date of the entry; and the heir of the grantor in such a deed is estopped from setting up a legal title under the patent.

THIS case was brought up by writ of error from the Circuit Court of the United States for the district of Indiana.

It was an ejectment brought by French and wife, to recover an undivided half of three hundred and twenty acres of land in the county of Vigo, in Indiana.

Upon the trial, the evidence offered by the plaintiff was as follows:

1. Evidence that one Silas Fosgit, who had been a Canadian volunteer in the army of the United States in the last war with Great Britain, had died between the 28th of June, 1816, and the 29th day of June, 1823, and that his only heirs at law were Minerva French, (wife of said William C. French,) residing in the State of Michigan, and one Aruna Fosgit.